HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO.869 OF 2006

BETWEEN

P. Prabhakar Reddy & others

.....

Appellants

And

The Commissioner for Prohibition & Excise, Government of Andhra Pradesh, Hyderabad & others

.....Respondents

:: JUDGMENT ::

Counsel for the Appellants : Shri S.V. Ramana

Counsel for the Respondents for : Government Pleader

Prohibition & Excise

Dated: 21.08.2006

Per G.S. SINGHVI, CJ

The appellants, who were granted licences to operate

retail shops of liquor at Adoni for the year 2005-06 and who are said to have given highest bids for grant of lease for the years 2006 to 2008, have filed this appeal for setting aside order dated 31.07.2006 in Writ Petition No.13515 of 2006 whereby the learned Single Judge declined to entertain their prayer for issue of a mandamus to the official respondents to accept their bids.

In the affidavit filed by Sri P.Prabhakar Reddy (appellant No.1 herein) in support of the writ petition, it was averred that in furtherance of auction notice issued by District Collector, Kurnool (respondent No.2 herein) for grant of lease of right to sell Indian made liquor and foreign liquor by shops under Rule 5 of the Andhra Pradesh Excise (Lease of Right of selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the 2005 Rules'), he and other appellants submitted their respective tenders. The bids given by them were higher than the upset price fixed by respondent No.2, but, he arbitrarily rejected their bids and invited fresh tenders for grant of lease. Appellant No.1 further averred that the decision of respondent No.2 is highly arbitrary and is ultra vires to the provisions of the 2005 Rules.

In the counter affidavit filed by Sri Ch. Venkateswarlu, Assistant Prohibition and Excise Superintendent, Kurnool, it was averred that the bids of the writ petitioners (appellants herein) were not accepted because they had formed a cartel. For the sake of convenient reference, paragraphs 3 to 5 of the affidavit of Sri Ch.Venkateswarlu are reproduced below:

> "3. In reply to the averments made in Para Nos.3 to 6 of the petitioner 's affidavit, it is submitted that the 2nd respondent, Dist.Collector/Auctioning Authority, Kurnool has issued a notification for grant of lease of right to sell Indian made Liquor/Foreign Liquor by shop under Rule 5 of the A.P. Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005 vide Kurnool District

Gazette No.2, dated 27.5.2006 inviting sealed tenders for the lease period 1.7.2006 to 30.6.2006 fixing date of auction is on 3.6.2006. In response to the above Notice (13) tenders were filed by the petitioners i.e., petitioner No.1, 2, 3, 4, 4, 6, 10 & 11 who are the existing licensees of 2005-2006, along with their group member i.e., petitioner No.7, 8 & 9 for the (11) shops of Adoni Municipality viz., single tenders for shop 1,2, 3, 4, 5, 6, 7, 9 and 11 and two tenders each in respect of shop No.8 and 10 with a nominal increase over the notified upset price as detailed below:

Sl. No.	Gazette No.	Name of the Shop	No.of Tenders Received	Notified Upset Price	Highest Tender Price	%of increase over upset price
1.	21	Adoni-1	1	1980480	1980810.00	0.02
2.	22	Adoni-2	1	1980450	1980630.00	0.01
3.	23	Adoni-3	1	1980120	1980324.00	0.01
4.	24	Adoni-4	1	1980060	1980360.00	0.02
5.	25	Adoni-5	1	1980320	1989600.00	0.02
6.	26	Adoni-6	1	1980440	1980650.00	0.01
7.	27	Adoni-7	1	1980250	1980450.10	0.01
8.	28	Adoni-8	2	1981470	2000019.99	0.94
9.	29	Adoni-9	1	1980340	1980549.00	0.01
10.	39	Adoni-10	2	1980680	1999999.99	0.98
11.	31	Adoni-11	1	1980220	1980459.00	0.01
		Total	13	21784830	21824852.08	0.18

It is submitted that, after opening the Tenders on 3.6.2006 the Auctioning Authority found that a cartel was formed by the existing licensees of Adoni Municipality. It is submitted that the powers vested under Rule 14(7) of the A.P. Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005 the auctioning authority recorded the reason and rejected the tenders.

It is respectfully submitted that, the questioning of the rejection of Tender notification dated 27.5.2006 i.e., Writ Petition Nos.11499/2006, and 11500/2006 and 11501/2006 were filed and the same were withdrawn.

4. It is further submitted that as per the provisions

under Rule 14 clause 8 of the A.P. Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005, the 2nd Notification issued on 5.6.2006. In response to the 2nd Notification (8) petitioners along with there other members of their group i.e., petitioner No.7, 8 & 9 have filed (11) tenders for all the (11) Notified shops of Adoni Municipality with a nominal increase over the notified upset price as detailed below:

Sl. No.	Gazette No.	Name of the Shop	No.of Tenders Received	Notified Upset Price	Highest Tender Price	%of increase over upset price
1.	21	Adoni-1	1	1980480	1989999.00	0.48
2.	22	Adoni-2	1	1980450	1991099.00	0.53
3.	23	Adoni-3	1	1980120	1988829.00	0.43
4.	24	Adoni-4	1	1980060	1995400.00	0.77
5.	25	Adoni-5	1	1980320	1989990.00	0.48
6.	26	Adoni-6	1	1980440	1988000.00	0.38
7.	27	Adoni-7	1	1980250	1987250.10	0.35
8.	28	Adoni-8	2	1981470	2001666.99	1.01
9.	29	Adoni-9	1	1980340	1989999.00	0.48
10.	39	Adoni-10	2	1980680	2010600.00	1.01
11.	31	Adoni-11	1	1980220	1986299.00	0.30
		Total	13	21784830	21919131.00	0.61

After opening the tenders on 30.6.2006 the auctioning authority (respondent No.3) found that a cartel was formed by the existing licensees of Adoni Municipality with the members of their own group who successfully managed to file single tenders and also managed to see that no other tenders are filed for the shops in question. Thus it is evident that free and fair participation by the intending tenderers have not taken place by forming a cartel and by preventing others in filing tenders on account of which Government revenue will be at stake. Therefore, in view of public revenue and public interest and in order to give free and fair opportunity to one and all and on subjective assessment of the circumstances based on the feed back given by the Excise Authorities and the situation that prevailed at the moment and after satisfying it was

decided to reject the tenders the powers vested under Rule 14(7) of A.P. Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005. As per statutory provisions the reasons for rejection were recorded and same were communicated to the petitioners vide Rc.No.B/666/2006, dt.30.6.2006.

5. It is respectfully submitted that the petitioners have no right for finalization of A4 liquor shop though they have quoted more than upset price. The power is vested as per Rule 14(7) of the A.P. Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005 the auctioning authority may by order reject any tender on the ground that the tender is of benami nature or that there is collusion among the tenderer who participated in the auction for release of any shop. Accordingly, as per procedure contemplated in the Act, the reasons for rejection were recorded and same were communicated to the petitioner vide Rc.No.B/666/2006, dt.30.6.2006."

Learned Single Judge referred to Rule 14(7) of the 2005 Rules and held that the decision taken by respondent No.2 not to accept the highest bids of the appellants does not suffer from any legal infirmity. She rejected the plea of discrimination raised by the writ petitioners by observing that they had not produced any tangible evidence to show that the decision of respondent No.2 is arbitrary.

Shri S.V. Ramana, learned counsel for the appellants argued that the decision taken by the auctioning authority not to accept the highest bid on the premise that the appellants had formed a cartel is not based on any evidence and the learned Single Judge gravely erred by refusing to entertain the prayer made in the writ petition. He submitted that the auctioning authority had accepted the single tender given in respect of some shops, but arbitrarily refused to approve the tenders of the appellants notwithstanding the fact that bids given by them were

highest and more than the upset price fixed by the competent authority.

Learned Government Pleader for Prohibition and Excise submitted that the auctioning authority ordered re-auction because it was felt that all the bidders had colluded to deprive the department of the expected increase in the revenue by grant of lease in respect of shops in question. She submitted that the appellants did not make any allegation of mala fide against the auctioning authority and, therefore, the learned Single Judge did not err by refusing to entertain their prayer.

In reply to the Court's query, learned Government Pleader gave out that on the next date of auction i.e., 8.07.2006 also, only single tenders have been received and, therefore, the auctioning authority has issued fresh notice for auction which is slated to take place today.

Rule 14 (7) of 2005 Rules empowers the auctioning authority to reject any tender on the ground that the tender is of benami nature or that there is collusion among the tenderers, who participated in the auction for the lease of any shop. On a plain reading of that rule, it becomes clear that the auctioning authority can, in a given case, refuse to accept the highest tender, if it is satisfied that an attempt is being made by the prospective lessees to deprive the department of the expected revenue by grant of lease of the shop.

In the present case, we find that the auctioning authority refused to accept the highest tenders given by the appellants because it formed a bona fide opinion that the tenderers have formed a cartle and a minimal increase was offered as compared to the lease amount of the previous year. The authority concerned noticed that in the previous year i.e. 2005-06, increase over the

upset price was to the extent of 6.75% whereas in the current bids the increase was only 0.02%.

The bona fide character of the decision by respondent No.2 is very much evinced from the averments contained in paragraphs 3 to 5 of the affidavit of Sri Ch. Venkateswarlu. These averments have not been controverted by the appellants. Therefore, we do not find any valid ground to interfere with the discretion exercised by the learned Single Judge not to entertain the prayer of the appellants.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

21.08.2006
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